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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FOLKS HESS, PLLC, AS TRUSTEE,

Plaintiff,

V.

WAYDE R. KING, an individual; BETZ POOLS LIMITED, a Canadian corporation; CITY NATIONAL BANK, N.A., a National Banking Association; UNITED STATES OF AMERICA; BRANDON BIRCHAK; MELISSA JAMES; DOES 1 through 100 and ROE CORPORATIONS 1 through 100, inclusive.

Defendants.

**CITY NATIONAL BANK, N.A., a National
Banking Association,**

Cross-Claimant,

V.

WAYDE R. KING, an individual; BETZ POOLS LIMITED, a Canadian corporation; UNITED STATES OF AMERICA; BRANDON BIRCHAK; and MELISSA JAMES,

Cross-Defendants.

**CITY NATIONAL BANK, N.A., a National
Banking Association,**

Third-Party Plaintiff,

V.

| HEATHER L. KING, an individual; DISCOVER
| BANK,

Third-Party Defendants.

CASE NO.: 2:23cv1084-RFB-BNW

**STIPULATION AND ORDER RE: LIEN
PRIORITY; DISMISSAL OF USA; AND
REMAND BACK TO STATE COURT**

1 **STIPULATION AND ORDER RE: LIEN PRIORITY; DISMISSAL OF USA;**
2 **AND REMAND BACK TO STATE COURT**

3 Plaintiff FOLKS HESS, PLLC, AS TRUSTEE (“Plaintiff”), Defendant/Counterclaimant
4 CITY NATIONAL BANK, N.A., a National Banking Association (“CNB”) and Defendant/
5 Counter-defendant UNITED STATES OF AMERICA (“USA”), by and through their counsel of
6 record, hereby stipulate and agree as follows:

7 A. Plaintiff, CNB and USA (each a “Party” and collectively the “Parties”), hereby agree
8 that:

9 1. This action involves the priority of liens against real property located at 5520
10 Ruffian Road, Las Vegas, Nevada, Clark County, Nevada, which is identified by the Clark County
11 Assessor as APN: 126-36-501-040 (the “Property”) and distribution of Surplus Proceeds (as defined
12 herein) following a nonjudicial foreclosure sale.

13 2. Wayde King acquired the Property on or about December 12, 2016, and a
14 deed was recorded in his favor on that date in the Official Records of the Clark County Recorder, as
15 Instrument No. 20161212:01525.

16 3. Wayde King financed his purchase of the Property with a loan (the
17 “Mortgage Loan”) secured by a deed of trust recorded in the Official Records of the Clark County
18 Recorder on December 12, 2016, as Instrument No. 20161212:01526 (the “Deed of Trust”).

19 4. On July 14, 2020, CNB obtained a judgment against Wayde King in the
20 amount of \$465,536.45 plus post-judgment interest, consisting of indebtedness owed in the amount
21 of \$464,601.38 plus costs of \$935.07 (the “CNB Judgment”). The CNB Judgment was recorded in
22 the Official Records of the Clark County Recorder on July 17, 2020, as Instrument No. 20200717-
23 0002231.

24 5. Subsequently, USA by and through the Department of Treasury - Internal
25 Revenue Service recorded Notices of Tax Liens against the Property (collectively, the “IRS Liens”).
26 On October 15, 2021, USA recorded a Notice of Tax Lien for \$552,405.70 against taxpayers,
27 Wayde King and his wife, Heather L. King, in the Official Records of the Clark County Recorder,
28 as Instrument No. 20211015-0000857; and on that same date, the IRS recorded a Notice of Tax

1 Lien for \$401,878.54 against taxpayer, Wayde King, in the Official Records of the Clark County
2 Recorder, as Instrument No. 20211015-0000858.

3 6. Wayde King subsequently defaulted on the Mortgage Loan and as a result,
4 Plaintiff as trustee under the Deed of Trust sold the Subject Property to a third-party at a trustee's
5 sale on July 26, 2022 (the "Trustee's Sale"). The Trustee's Sale resulting in surplus proceeds of
6 approximately \$84,868.37 ("Surplus Proceeds").

7 7. As of this date and the date of the Trustee's Sale Date, the amount owed on
8 the CNB Judgment exceeds the amount of the Surplus Proceeds.

9 B. The Parties further agree that the CNB Judgment has priority over the IRS Liens
10 with respect to the Subject Property and the Surplus Proceeds **only** since the CNB Judgment was
11 recorded first-in-time. Accordingly, for purposes of this action only (and any remanded Eighth
12 Judicial Court action), USA disclaims any interest in the Surplus Proceeds and therefore, should be
13 dismissed from the action.

14 C. The Parties agree to the dismissal of USA from the Complaint and the Counterclaim
15 with prejudice, and as the dismissal relates to the USA, each party shall bear its own fees and costs.

16 D. Upon entry of the Court's Order approving this Stipulation, the Parties agree to
17 remand the action back to the State of Nevada, Eighth Judicial Court since this Court will no longer
18 have jurisdiction; and the IRS agrees to be bound by the determination of the state court regarding
19 lien priority and distribution of the Surplus Proceeds.

20 DATED this 29th day of August, 2023.

DATED this 29th day of August, 2023.

21 HUTCHISON & STEFFEN, PLLC

JASON M FRIERSON
United States Attorney

23 /s/ Michael Brooks

24 Michael Brooks, Esq.
Nevada Bar No. 7287
25 Christine Davies, Esq
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26 Attorneys for Plaintiff Folks Hess PLLC, as
Trustee

/s/ Summer A. Johnson

Summer A. Johnson, Esq.
501 Las Vegas Blvd. So., Suite 1100
Las Vegas, Nevada 89101
27 Attorney for Defendant/Cross-Defendant
United States of America

28 ***Signature Continued on Next Page.***

1 DATED this 29th day of August, 2023

2 HOLLEY DRIGGS

3 /s/ Marilyn Fine

4 Marilyn Fine, ESQ.
Nevada Bar No. 5949
5 300 South 4th Street, Suite 1600
Las Vegas, Nevada 89101
6 Attorneys for Defendant City National Bank

7

8 **ORDER**

9 Based upon the foregoing Stipulation by and between the Parties, and good cause
10 appearing, IT IS SO ORDERED that:

11 1. The CNB Judgment has priority over the IRS Liens and since the amount owed on
the CNB Judgment exceeds the amount of Surplus Proceeds, the USA has disclaimed any interest
13 in the Surplus Proceeds.

14 2. USA is hereby dismissed from Plaintiff's Complaint and CNB's Counterclaim with
prejudice; and with respect to such dismissal, each party shall bear its own fees and costs.

16 3. Upon the dismissal of the USA, this Court no longer has jurisdiction and as such,
17 the action is hereby remanded to the State of Nevada, Eighth Judicial Court; and the USA shall be
18 bound by the Nevada State court's determination regarding priority of liens and distribution of the
19 Surplus Proceeds.

20 **IT IS SO ORDERED.**



21 UNITED STATES DISTRICT JUDGE

23 Respectfully submitted,

24 HOLLEY DRIGGS

25 /s/ Marilyn Fine

26 MARILYN FINE, ESQ.
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